BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
FEB 07 2019
WORKERS' COMPENSATION

MUI PHO TRAN,	:	
Claimant,	:	
vs.	:	File Nos. 5058173, 5058174, 5058175
TITAN TIRE CORPORATION,	:	
	:	ARBITRATION
Employer,	:	
	:	DECISION
and	:	
ZURICH AMERICAN INSURANCE COMPANY,	:	
Insurance Carrier, Defendants.	:	Headnotes: 1100, 1108, 1402, 1802, 2500

STATEMENT OF THE CASE

These are proceedings in arbitration. The contested cases were initiated when claimant, Mui Pho Tran, filed her three original notices and petitions with the Iowa Division of Workers' Compensation. The petitions were filed on January 24, 2017. Claimant alleged she sustained work-related cumulative injuries on May 4, 2015, May 7, 2015, and/or April 6, 2016. (Original notices and petitions)

For purposes of workers' compensation, Titan Tire Corporation, is insured by Zurich American Insurance Company. Defendants filed their answers on February 10, 2017. The defendants denied the occurrence of the work injuries. In File Number 5058173, a First Report of Injury was filed on June 12, 2016. In File Number 5058174, a First Report of Injury was filed on June 12, 2015. In File Number 5058175, a First Report of Injury was filed on April 6, 2016.

The hearing was held on February 15, 2018 at 1:00 p.m. The hearing took place at the Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa. The undersigned appointed Ms. Amy Pedersen, as the certified shorthand reporter. She is the official custodian of the records and notes.

The undersigned also appointed Ms. Katherine Phan-Nguyen as the interpreter. Claimant's first language is Cantonese.

Claimant testified on her own behalf. Michelle Phan, claimant's daughter, also testified. Defendants called Ms. Joyce Kain, a human resources consultant for Titan Tire to testify at the hearing.

Joint Exhibits 1 through 8 were admitted. Claimant offered exhibits marked 1 through 19. Defendants offered exhibits A through G. All exhibits were admitted as part of the record. The parties also submitted post-hearing briefs on April 15, 2018. The case was deemed fully submitted on that date.

FILE NUMBER 5058173 STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury;

2. Although entitlement for temporary or healing period benefits cannot be stipulated, the parties agree claimant was off work from November 2, 2017 through the date of the hearing and ongoing for cervical and low back issues;

3. The parties believe the weekly benefit rate is $543.06 for any benefits that may be awarded;

4. Defendants are entitled to a credit under Iowa Code section 85.38(2) for payment of sick pay/disability income as detailed in exhibit 11; and

5. The parties agree claimant has paid certain costs as detailed in claimant's exhibit 1.

FILE NUMBER 5058173 ISSUES

The issues presented are:

1. Whether claimant sustained an injury on May 4, 2015 which arose out of and in the course of her employment;

2. Whether the alleged injury is a cause of temporary and/or permanent disability;

3. Whether claimant is entitled to a running award from November 2, 2017 through the date of the hearing and ongoing;

4. Whether claimant is entitled to permanency benefits for the left knee and shoulders;

5. If permanency is awarded for the left knee and shoulders, there is a dispute whether the commencement date is December 1, 2016 or November 1, 2017;

6. Whether defendants are liable for the payment of medical expenses pursuant to Iowa Code section 85.27;

7. Whether claimant is entitled to an independent medical examination pursuant to Iowa Code section 85.39;

8. Whether claimant is an odd-lot employee;

9. Whether penalty benefits pursuant to Iowa Code section 86.13 are due; and

10. Whether claimant is entitled to alternate medical care for the alleged May 4, 2015 injury.

FILE NUMBER 5058174 STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury;

2. Although entitlement for temporary or healing period benefits cannot be stipulated, the parties agree claimant was off work from November 2, 2017 through the date of the hearing and ongoing for cervical and low back issues;

3. The parties believe the weekly benefit rate is $543.06 for any benefits that may be awarded;

4. Defendants are entitled to a credit under Iowa Code section 85.38(2) for payment of sick pay/disability income as detailed in exhibit 11; and

5. The parties agree claimant has paid certain costs as detailed in claimant's exhibit 1.

FILE NUMBER 5058174 ISSUES

The issues presented are:

1. Whether claimant sustained an injury on May 7, 2015 which arose out of and in the course of her employment;

2. Whether the alleged injury is a cause of temporary and/or permanent disability;

3. Whether claimant is entitled to a running award from November 2, 2017 through the date of the hearing and ongoing;

4. Whether claimant is entitled to permanency benefits for the left knee and shoulders;

5. If permanency is awarded for the left knee and shoulders, there is a dispute whether the commencement date is December 1, 2016 or November 1, 2017;

6. Whether defendants are liable for the payment of medical expenses pursuant to Iowa Code section 85.27;

7. Whether claimant is entitled to an independent medical examination pursuant to Iowa Code section 85.39;

8. Whether claimant is an odd-lot employee;

9. Whether penalty benefits pursuant to Iowa Code section 86.13 are due; and

10. Whether claimant is entitled to alternate medical care for the alleged May 7, 2015 injury.

FILE NUMBER 5058175 STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury;

2. Although entitlement for temporary or healing period benefits cannot be stipulated, the parties agree claimant was off work from November 2, 2017 through the date of the hearing and ongoing for cervical and low back issues;

3. The parties believe the weekly benefit rate is $477.07 for any benefits that may be awarded;

4. Defendants are entitled to a credit under Iowa Code section 85.38(2) for payment of sick pay/disability income as detailed in exhibit 11; and

5. The parties agree claimant has paid certain costs as detailed in claimant's exhibit 1.

FILE NUMBER 5058175 ISSUES

1. Whether claimant sustained an injury on April 6, 2016 which arose out of and in the course of her employment;

2. Whether the alleged injury is a cause of temporary and/or permanent disability;

3. Whether claimant is entitled to a running award from November 2, 2017 through the date of the hearing and ongoing;

4. Whether claimant is entitled to permanency benefits for the left knee and shoulders;

   If permanency is awarded for the left knee and shoulders, there is a dispute whether the commencement date is December 1, 2016 or November 1, 2017;

5. Whether claimant provided timely notice pursuant to Iowa Code section 85.23;

6. Whether defendants are liable for the payment of medical expenses pursuant to Iowa Code section 85.27;

7. Whether claimant is entitled to an independent medical examination pursuant to Iowa Code section 85.39;

8. Whether claimant is an odd-lot employee;

9. Whether penalty benefits pursuant to Iowa Code section 86.13 are due; and

10. Whether claimant is entitled to alternate medical care for the alleged April 6. 2016 injury.

FINDINGS OF FACT

This deputy, after listening to the testimony of claimant, her daughter, Michelle Phan, and Ms. Joyce Kain, after judging the credibility of the witnesses, plus after reading the evidence, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

The party who would suffer loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

Claimant was born on June 1, 1950 in Vietnam. Her primary language is Cantonese. That is the language spoken in her home. She is divorced but one grandchild is dependent on her for purposes of her taxes. Claimant attended four years of school in Vietnam. It is the substance of her formal education.

Claimant is 5 feet and 3 inches tall. Her weight hovers around 195 pounds. According to various BMI calculations, claimant is considered morbidly obese. She was a chronic smoker but discontinued smoking in 2017.

Claimant arrived in the United Stated in 1994. She studied English as a Second Language for approximately one year. She can read and write her name, address and telephone number. She can read some English but she cannot write English. She speaks some English but understands English better than she speaks it. Claimant holds an Iowa drivers' license.

The first job claimant held in the United States was as a meat packer at Monfort. Claimant worked there for one year only. The plant closed.

Next, claimant worked at Prairie Meadows as a housekeeper. She was on her feet all day. There was no heavy lifting. She had the usual housekeeping duties one would expect. Claimant worked there for approximately one year.

On September 24, 1998, claimant commenced employment with Titan Tire. (Exhibit D, page 40) Initially, claimant was hired as a tire builder. She performed the job for approximately four weeks. However, her manager told her she was not qualified for the job. (Transcript, page 22)

Claimant was transferred to the "tire stock" position. (Tr. pp. 22-23) Claimant drove a forklift truck among other duties. She also had to change a 50 to 60 pound propane tank on her forklift truck. She was required to maintain the upkeep of her equipment and to ensure product flow. The position description is included in claimant's exhibit 8, pages 111-112. Twenty-one primary duties were listed for the "tire stock" job. The primary duties are incorporated by reference as though fully set out herein.

Personal protective equipment was required on the job. Claimant was required to wear hearing protection, safety glasses, proper clothing, and safety shoes. (Cl. Ex. 8, p. 112)

Claimant testified that when she drove the forklift, she had to turn her head to the left or to the right in order to back up the truck. The turning of the head occurred constantly. There was no way claimant could drive without turning her head. She also had to hop on and off the forklift truck to secure supplies for transport. Claimant indicated, she had to push, pull, bend, twist, squat, and kneel throughout her shift. (Cl. Ex. 8. P. 113)

During direct examination, claimant testified about her other duties as a "tire stock" person. Claimant testified:

Q. (By Mr. Krpan) And if you were - - if you transported material to the tire builders and you didn't go backwards and look over your left shoulder and twist, could you get written up by supervisors?

A. Okay. Like, yeah. If they saw, someone saw she said like – - write up. Safety man. So if you don't turn back and the safety man see you then they write you up.

Q. Now, being a forklift operator in your job and what you were required to do, were you always moving, either operating a forklift or getting off the forklift to put materials on the skids, that you transported to the tire builders?

A. Yes, like when after I transport, I come back, and if they request, for example, more tires, then I go back and take it and put it up and then transport it to them.

Q. Is it a production operation at Titan? Do you understand what I mean by that?

THE INTERPRETER: Production?

Q. Is it a place where production - - where time is important in getting products to the tire builders?

A. Yeah.

THE INTERPRETER: She's like, she takes the products to the builder, and she comes back and brings the product again to the builder again.

Q. You're moving all the time?

A. Work all the time, busy.

Q. I'm going to ask you this question, and I'll try to give a simpler question, but did you work with cloth liners on rolls? Did you have to put those on the skid?

A. A small I can put on the skid. The big one, pull it out, put it on the fork, and then, yeah, take it to - - drive to the people, so people can - -

Q. That's part of a tire, isn't it, a cloth liner? Is a cloth liner used by the tire builders?

DEPUTY COMMISSIONER: So does she take the small rolls of cloth to the tire builders? I didn't get the answer.

Q. Yeah. I understand. Does this show one of the rolls that you put on your skid to take to the tire builders that's shown on E-15 starting at - -

A. Yeah. Small – she said small. She can take it out and put it on the skid, and the big one is very heavy, and pull it out the big one, I have to pull it out.

Q. How would she describe this size, E-15 on 146? Is that a little one or a big one?

A. This is small?

Q. The small one. Do you see how the lady is picking it up on 148?

A. She said like this one is okay. The belt is high. It's very heavy.

Q. But is that work that she would do?

A. Yeah. The forklift is very high. Okay. So gas - - the gas - - where's the gas? She's talking about - -

Q. The gas tank?

A. Yes.

Q. The gas tank is on 149. What did you do with the gas tank?

A. Very heavy, so she has to take like kind of - - push it, but she has to like get ready to throw it on this one.

Q. And you would just do that - -

A. Sometimes one would fall down.

Q. And would you do this once a shift or sometimes twice a shift?

A. Yeah. Normally if I work eight hours, I have to do it only one. I throw up only one, but I still - - if I work the overtime, I have to do two.

Q. And the way this woman is carrying this E-15, 147, is that the kind of rolls that you would have to put on your forklift to take to the tire builders?

A. The roll is more, so she puts on the skid and takes it to the builder.

Q. But she would have to take it from a storage place to a skid to put it on the skid to transport it to the tire builder?

A. Yes.

DEPUTY COMMISSIONER: So she hand-carries this roll of cloth to the skid? Ask her that.

A. Yes. She said this is small, I can carry it, but the bigger I cannot carry it, and then I asked her, can you answer yes or no? She said yes.

Q. And did you do this all day?

A. On the builder side I do it all day, but on the skid liner - - I don't know what it is, I only do like a couple of times a day.

Q. And that's usually when you get overtime; is that correct? As a strip winder, that's a different - -

A. Before like she does tire stocks, and then like she works strip winder.

Q. Did you have a heavy job at Titan? Was it a hard job?

A. Yeah.

(Tr. pp. 30-34)

RELEVANT TREATMENT RECORDS PRIOR TO May 4, 2015

There is no question; claimant has had a long history of low back and cervical complaints. On January 31, 2006, claimant visited her personal physician, Kevin Moore, M.D., with complaints of "Left low back pain." (Joint Exhibit 1, page 4) Dr. Moore diagnosed claimant with "LOW BACK PAIN CONSISTENT WITH LUMBAR STRAIN." (Jt. Ex. 1, p. 4) Dr. Moore prescribed 60 mg of Cataflam and a heating pad. (Jt. Ex. 1, p. 4)

On December 1, 2006, claimant again complained of low back pain of three days' duration. Dr. Moore noted claimant had a history of osteoarthritis. Claimant reported a dull pain that increased with activities. Dr. Moore prescribed 200 mg of Celebrex. The physician diagnosed claimant with "LOW BACK PAIN/OSTEOARTHRITIS." (Jt. Ex. 1, p. 5)

Claimant returned to Dr. Moore on April 9, 2007. She complained of back pain with early morning stiffness. (Jt. Ex. 1, p. 6) Claimant indicated the back pain had been worse over the prior two weeks. (Jt. Ex. 1, p. 6) Dr. Moore prescribed 500 mg of Naprosyn. (Jt. Ex. 1, p. 6)

On August 26, 2007, claimant complained to Dr. Moore not only about low back pain but also about a "left leg prickly sensation." (Jt. Ex. 1, p. 7)

Claimant presented to the Mercy Clinics on October 28, 2009. She complained of neck pain. The photocopy of the medical record was of such poor quality, the

undersigned was unable to read the medical provider's comments. (Jt. Ex. 1, p. 8) The same is true for the visit on January 29, 2010.

On March 12, 2012, claimant treated at the Mercy Campus Medical Clinic. Her chief complaint was cervical neck pain of one year in duration. (Jt. Ex. 1, p. 10) Claimant indicated her pain started in the back of her neck and came up to the back of her scalp. Claimant did not have radiation into the upper extremities. (Jt. Ex. 1, p. 10) Dr. Moore prescribed Naproxen. (Jt. Ex. 1, p. 11)

On January 28, 2013, claimant provided the following medical history to Dr. Moore:

> **History of Present Illness**
>
> This is a 62-year-old female with chief complaint of left shoulder pain for the past month. She has pain when she tries to lift her shoulder above her head. She also complains of periodic cervical neck pain [.] [S]he had x-rays done last year which showed some C5-C6 osteoarthritis. She works as a forklift driver. She also complains of bilateral hand numbness and tingling and an associated loss of grip muscle grip strength. She denies any history of injury. She has a long history of tobacco use and has been known to exceed one pack per day.

(Jt. Ex. 1, p. 12)

Dr. Moore diagnosed claimant with a left shoulder impingement. (Jt. Ex. 1, p. 13) The physician opined claimant needed physical therapy and an orthopedic consultation. (Jt. Ex. 1, p. 13) Claimant underwent a steroid injection into the left shoulder, but claimant declared the injection did very little to ease her pain. (Jt. Ex. 1, p. 15)

On February 1, 2013, claimant went to Iowa Ortho because of left shoulder pain. Scott A. Meyer, M.D. examined claimant. The medical history claimant provided indicated:

> This 62 year old female presents with:
>
> Left shoulder pain.
>
> No previous injury. Has not had physical therapy. Pain wakes her up at night.
>
> Onset: 1 Month Ago. Severity level is moderate-severe. It occurs constantly and is worsening. Location: Left shoulder. The pain radiates to the neck, down left arm, and to right shoulder. The pain is piercing and sharp. Context: there was no injury. The pain aggravated by lifting and movement. The pain is relieved by pain/RX meds. Pertinent negatives include bruising.

(Jt. Ex. 3, p. 89)

The diagnosis given was left scapulohumeral fibrositis/impingement. (Jt. Ex. 3, p. 91) The physician's assistant performed a Left subacromial injection via posterior approach into the subacromial space with 80 mg Depo-Medrol and 8ml of lidocaine. (Jt. Ex. 3, p. 92) Claimant tolerated the procedure well and was released home.

On November 18, 2013, claimant returned to Dr. Moore. Claimant reported the following medical history:

> This is a 63 yr old female with c/c of cervical neck and bilateral shoulder pain. She operates a fork lift up to 12 hours per day. She reported her shoulder and neck pain to her company and she was told to see her family DR. She has been taking [A]eve and that tends to help.

(Jt. Ex. 1, p. 17)

Dr. Moore noted both shoulders showed tenderness to palpation. There was no muscle atrophy. There was range of motion to 85 degrees and abduction and anterior flexion. There was mild to moderate cervical neck tenderness to palpation posteriorly. There was full range of motion. Dr. Moore found no crepitus and no visible abnormalities. Dr. Moore diagnosed claimant with osteoarthritis of the shoulder. The physician prescribed Etodolac 500 mg to be taken twice a day. (Jt. Ex. 1, p. 18)

Claimant again treated with Dr. Moore on May 22, 2014. (Jt. Ex. 1, p. 20) Claimant discussed her shoulder condition. She explained how she had to look over her shoulders whenever she drove her forklift truck at work. (Jt. Ex. 1, p. 20) Dr. Moore renewed claimant's prescription for Etodolac.

RELEVANT MEDICAL TREATMENT FOLLOWING May 4, 2015

On May 13, 2015, claimant visited Occupational Medicine Plus, P.C. (Jt. Ex. 2, p. 84) Daniel C. Miller, D.O., examined claimant for neck, shoulder and back pain. Claimant reported the following history to Dr. Miller:

> Pt drives a forklift and has worked for [T]itan since 1998. Pt states that the pain is from a repetitive motion. When she has to drive her forklift and backing up turning her head to the side makes her neck back and shoulders hurt. Pt stated that this has been on going [sic] for two years but in the last few months the pain in her head, back and shoulders has become 'really bad'. Pain worse head, back and shoulders on the left side. As when she drives the forklift and backs up she looks over her left side. Both shoulders hurt but the left is worse than the right. Pt states that sometimes she has to pick up left arm to move it. Occ N/T in both hands (two middle digits) and sometimes only in one hand (two middle digits). Head – Pt states that the top of her head to the back of her head hurt. When her neck aches she gets a headache. Pain is always there

> but when she takes meds the pain goes away. When pt turns her head to the left and right she has pain. Also when looking up and down. Tries to do neck/head exercises but still hurts. Back -`Has pain around the middle of her back. Right around the bra line. More pain on the left side around the hip area on the lower back. When sitting it is worse. When she lays down her back is better. Pt states her back is at a '8-10' on pain scale 0-10 when working, pt states her back right now is a '5' on a pain scale 0-10 since she has been off work for a week with vacation. Pt is taking advil 200 mg 4 tabs in the morning and 4 tabs before bed, helps her for about 2-3 hours. Pt states that she has been using a massaging machine but that makes her muscles hurt more. Denies using heat or ice. Pt did see PCP cant [sic] remember when but did receive a cortisone injection into that area. PCP did refer to PT but she doesn't know the way so she doesn't go. Pt is on HTN med...

(Jt. Ex. 2, p. 84)

Dr. Miller diagnosed claimant with osteoarthritis. (Jt. Ex. 2, p. 85) Dr. Miller could not state with medical certainty claimant's medical issues were work related. (Jt. Ex. 2, p. 85)

On May 26, 2015, claimant returned to her personal physician, Dr. Moore for a shoulder recheck. Dr. Moore diagnosed claimant with: "Arthralgia, myalgia, joint stiffness, and left shoulder pain." (Jt. Ex. 1, p. 30) Dr. Moore found diffuse left shoulder tenderness to palpation. (Jt. Ex. 1, p. 30) Claimant had full range of motion and no atrophy. Her spine had normal alignment and full range of motion.

On January 22, 2016, Dr. Moore examined claimant for numerous health issues. Among other matters, claimant complained of left shoulder and left knee pain. Dr. Moore stated the pain was secondary to osteoarthritis. However, he acknowledged the following about claimant's employment situation:

> Patient works as a forklift driver. She really [sic] has to do any heavy lifting however she does use her left leg quite often to apply the brake to a forklift.

(Jt. Ex. 1, p. 36)

Dr. Moore diagnosed claimant with: "arthralgia, myalgia, and Lt. knee pain and lt. shoulder pain with increased activity." (Jt. Ex. 1, p. 37) The physician noted diffuse right shoulder tenderness and right knee tenderness. The spine had normal alignment and range of motion. (Jt. Ex. 1, p. 37)

On March 27, 2016, claimant was complaining of cervical spine problems, left shoulder pain and pain in both knees. (Jt. Ex. 1, p. 39) Claimant was taking 50 mg of Tramadol for pain as well as 220 mg of Aleve. (Jt. Ex. 1, p. 39) Claimant complained of

occasional drowsiness after taking the Tramadol. (Jt. Ex. 1, p. 39) Dr. Moore offered a left knee cortisone injection. Claimant declined. (Jt. Ex. 1, p. 41)

Claimant returned to see Dr. Moore on July 29, 2016. She complained of neck pain, left shoulder pain, bilateral knee pain, and widespread osteoarthritis. (Jt. Ex. 1, p. 42) Claimant was still taking Tramadol and Aleve for pain management. (Jt. Ex. 1, p. 42)

On November 15, 2016, claimant presented to Mercy Physical Medicine & Rehabilitation. This was a referral from Dr. Moore. Claimant was examined by Al Huong Phu, D.O. (Jt. Ex. 6, p. 117) Dr. Phu assessed claimant's condition as:

Assessment

1) Generalized osteoarthritis of multiple sites

2) Knee pain

3) Localized osteoarthritis of shoulder, left

4) Hypertension

66 y/o F with chronic upper back pain, left shoulder pain, left lower back pain and left knee pain

Overuse syndrome

likely OA affecting large joints

poor mechanics for upper back

Left SI joint pain

Left medial ligamentus strain of the knee

Poor knee stabilizers

Hx of tobacco use

htn

obese

(Jt. Ex. 6, p. 120)

X-rays of the left shoulder showed:

> The bones of the left shoulder in anatomic alignment with no fracture or dislocation. There is mild glenohumeral joint osteoarthritis and a type II acromion. Mild sprain is present at the supraspinatus insertion on the greater tuberosity. There is no os acromiale.

(Jt. Ex. 6, p. 115)

X-rays of the left knee demonstrated:

> There is narrowing of the medial compartment with marginal osteophytes and subchondral sclerosis all compatible with moderate osteoarthritis. There is lucency underlying the medial aspect of the medial tibial plateau, likely a large subchondral cyst. A few joint bodies are present in the posterior aspect of the joint space as well as a moderate-sized fabella. There is a physiologic amount of fluid within the suprapatella bursa.

(Jt. Ex. 6, p. 116)

On December 15, 2016, claimant visited Dr. Moore with complaints of pain in her shoulders and back. The physician found diffuse left knee tenderness with mild crepitus. The left shoulder had tenderness over the ac joint and deltoid. The spine had normal alignment and range of motion. (Jt. Ex. 1, pp. 44-45) Claimant was taking Hydrocodone-Acetaminophen 20-12.5 mg and 220 mg of Aleve. (Jt. Ex. 1, p. 44)

On January 4, 2017, claimant presented to Mercy Riverside Physical Therapy for an evaluation by Elizabeth Harden, PT, DPT. Claimant voiced problems with pain in her neck, bilateral shoulders, and low back. (Jt. Ex. 5, p. 111) Claimant explained she drove a forklift truck and had her head turned to the left for most of the time she was driving. Claimant based her level of pain at 7 to 8 out of 10 with the pain primarily on the left side of her neck and in the left shoulder. (Jt. Ex. 5, p. 111) The physical therapist opined:

> The patient shows signs and symptoms consistent with neck and back pain, secondary to a postural imbalance and work related impairment secondary to constantly rotating to the left.

(Jt. Ex. 5, p. 112)

The physical therapist recommended a combination of aquatic and land-based therapy for flexibility, range of motion, core stabilization, postural strengthening, and pain relief. (Jt. Ex. 5, p. 113) Both heat and ice were recommended as well. (Jt. Ex. 5, p. 114) Physical therapy for 12 weeks was recommended with 2 sessions per week. (Jt. Ex. 5, p. 114)

Claimant returned to Mercy Physical Medicine and Rehabilitation on January 17, 2017. Claimant indicated her pain level was 7 out of 10 on a daily basis. She attributed the pain to driving a forklift truck for 19 years and having to look over her shoulders. Claimant reported the pain was worse with lifting, turning her head and walking. (Jt. Ex. 6, p. 122) Claimant was participating in physical therapy. Dr. Phu conducted a physical examination. She found:

> Neck: Inspection/palpation: neck is midline with flexion forward, tenderness to palpation over posterior paraspinals bilaterally, no masses, no swelling, no rashes, no atrophy,
>
> Musculoskeletal: shoulders rounded forward
>
> No sulcus sign, tenderness with palpation over the AC joint, tenderness over upper trapezius, diffusely tender anterior deltoid, posterior deltoid, biceps tendon, medial periscapular region on the right/left, no instability.
>
> AROM: full flexion, extension, abduction, internal rotation, external rotation, without pain
>
> PROM: full flexion, extension, abduction, internal rotation, external rotation, without pain
>
> Special tests: mildly positive Hawkins, neg Neers, neg Lift off, neg Yergasons, Speeds test, anterior/posterior laxity.
>
> ....
>
> Musculoskeletal: Gait is slow cadence, mild left knee recurvatum with heel stance. UnAble [sic] to walk on toes and heels with good balance [Next field] tenderness over left SI joint.
>
> AROM: limited flexion, full extension, with pain
>
> PROM: full flexion, extension with pain
>
> Inspection/palpation: no swelling, no redness, tenderness over medial joint line, no tenderness, over the patellar tendon, quadriceps tendon, lateral joint line, pes anserine, popiletal area, no masses [Next fiels] mild crepitus o [sic] the right
>
> Special tests: negative anterior drawer, posterior drawer, Lachman's McMurrays

(Jt. Ex. 6, p. 124)

Dr. Phu recommended claimant resume aqua therapy, engage in stretching activities, and perform low impact walking. (Jt. Ex. 6, p. 125)

On January 24, 2017, claimant again saw Dr. Moore about pain in the upper back, shoulders and some muscle aches in the legs. (Jt. Ex. 1, p. 47) She was prescribed Acetaminophen with Codeine and Tramadol as pain medication. (Jt. Ex. 1, p. 47) Claimant was injected with 80 mg of Depo-Medrol into the right shoulder. (Jt. Ex. 1, p. 49)

On February 15, 2017, claimant returned to see Dr. Moore. (Jt. Ex. 1, p. 50) Claimant reported she had a difficult time climbing on and off the forklift truck due to hip pain. Dr. Moore found the left hip to be more tender than the right one. (Jt. Ex. 1, p. 151) The hip did have full range of motion. (Jt. Ex. 1, p. 51) Tylenol #3 was refilled. Dr. Moore ordered bilateral hip x-rays.

On February 28, 2017, claimant visited Dr. Moore concerning the results of the bilateral hip x-rays. No significant pathology was noted within the hip joint. (Jt. Ex. 1, p. 53) Dr. Moore restricted claimant to working only 40 hours per week. (Jt. Ex. 1, p. 54) Claimant was not to engage in any overtime work. (Jt. Ex. 1, p. 56)

Dr. Moore next examined claimant on March 20, 2017. Claimant continued to voice complaints with her left knee, left shoulder and left hip. (Jt. Ex. 1, p. 58) Dr. Moore wrote in his clinical notes for the same date:

> FMLA papers completed recommending that her work week not exceed 40 hours. It should be noted that she underwent physical therapy and also had a physical medicine rehabilitation consult and in spite of this her condition is not improved. She has a [sic] overuse syndrome and I think modification of her work activity will help....

(Jt. Ex. 1, p. 59)

Three days later, claimant returned to see Dr. Phu. The rehabilitation specialist assessed claimant with the following conditions:

1. Muscle pain, myofascial
2. Shoulder region pain
3. Overuse syndrome
4. Sprain of ligament of left ankle

(Jt. Ex. 6, p. 128)

Dr. Phu explained to claimant that her multiple pain areas were likely to be chronic in nature. (Jt. Ex. 6, p. 128) The physician opined the pain areas were

secondary to a multitude of things. (Jt. Ex. 6, p. 128) Claimant replied she enjoyed working because it kept her mind off her pain. (Jt. Ex. 6, p. 128) Dr. Phu recommended independent pool exercises, over-the-counter transdermal creams, and an Ace bandage for claimant's ankle. (Jt. Ex. 6, p. 129)

On April 18, 2017, claimant saw Dr. Moore because of low back pain. She wanted FMLA for one to two days per week. Dr. Moore explained one to two days off of work per week would not necessarily work for her employer. Dr. Moore opined magnetic resonance imaging would be a logical test to order. (Jt. Ex. 1, p. 62)

On May 9, 2017, claimant traveled to the emergency department at Mercy Medical Center because of severe pain and swelling in her right foot. The problems developed three days prior to the visit to the hospital. Claimant reported there were occasional sharp stabbing pains that ran up her right leg. (Jt. Ex. 7, p. 137) Sean Sayre, M.D., treated claimant for gout. The doctor's rationale for his diagnosis was:

> Rationale: Patient presents with red swollen base of great toe, no punctures or signs of ulceration and erythema not in keeping with that of cellulitis, x-ray done from triage demonstrates no significant abnormalities, based on presentation, exam, and normal x-ray, this is in keeping with gouty arthritis, will start patient on Indomethacin and have her follow-up with a primary care physician.

(Jt. Ex. 7, p. 139)

Dr. Moore next examined claimant on May 25, 2017. (Jt. Ex. 1, p. 63) He examined claimant for her gout and widespread arthritis. Claimant's symptoms were primarily the same. On June 9, 2017, Dr. Moore diagnosed claimant with arthralgia, myalgia, neck pain and right foot pain. (Jt. Ex. 1, p. 67) Claimant continued to treat with Dr. Moore throughout the summer of 2017. On June 27, 2017, Dr. Moore listed all of claimant's active problems. They were:

Active Problems

1. Bilateral hip pain
2. Chronic back pain
3. Chronic obstructive pulmonary disease
4. Coronary artery disease
5. Cough
6. Gastritis
7. Generalized osteoarthritis of multiple sites

8. Gout
9. Hematuria
10. Hyperglycemia
11. Hyperlipidemia
12. Hyperplastic rectal polyp
13. Hypertension
14. Knee pain
15. Localized osteoarthritis of shoulder, left
16. Muscle pain, myofascial
17. Neck symptoms
18. Need of influenza vaccination
19. Osteoarthritis of left knee
20. Overuse syndrome
21. Pelvic pain
22. Rectal bleeding
23. Renal insufficiency
24. Shoulder region pain
25. Sprain of ligament of left ankle
26. Tobacco use
27. Type 2 diabetes mellitus

(Jt. Ex. 1, p. 72)

On August 16, 2017, Dr. Moore wrote a note releasing claimant to return to work on August 21, 2017. Dr. Moore asked Titan Tire to ensure claimant had some assistance when she had to change the propane tank on her forklift truck. (Jt. Ex. 1, p. 81)

Claimant returned to Mercy Physical Medicine and Rehabilitation on September 11, 2017. Claimant provided the following medical history to Dr. Phu:

> **History of Present Illness**
>
> Pt returns today for a follow-up evaluation. She was last seen in March 2017 for neck and shoulder pain. Since her last visit she feels that her neck, left shoulder and left lower back pain has been persistent and constant. Since her last visit she had a coronary stent placement on June 5, 2017 and did follow up with cardiac rehab. Patient reports sharp and constant lower back pain for the past couple of years, she has pain upon standing and walking. She does not have leg numbness. She also as [sic] shoulder and neck pain as well. Pain level is rated as a 7-8/10. Pain is worse with sitting and walking for more than 30 minutes, and is improved with laying down. She also has numbness and tingling in her left leg. She denies any groin pain. She uses a massager. She continues to work. She states she was off for 3 months due to stent placement and she feels her pain was not improved while she was off. She spent her days at home and was doing household chores. No falls. No changes in bowel or bladder function.

(Jt. Ex. 6, p. 130)

Dr. Phu injected claimant at the SI joint space with 3cc of 1% lidocaine, 3cc of 0.5% bupivacaine, and 1cc of 40 mg Kenalog. Claimant tolerated the procedure without any complications. (Jt. Ex. 6, p. 133)

Dr. Phu discussed claimant's wellness plan with her. The physician informed claimant:

> Discussed with patient that her multiple pain areas will likely be chronic in nature. It is secondary to a multitude of things. She reports she likes working because it gets her mind off of her pain; however, I do think her repetitive motions aggravate her pain. Reviewed with her that unless [sic] she does not start taking care of her body she will continue to have pain. She needs to start a dedication home exercise program to improve her strength, flexibility and ROM.

(Jt. Ex. 6, p. 134)

On October 9, 2017, Dr. Phu injected claimant's left shoulder. (Jt. Ex. 6, p. 136) The injection was primarily for joint pain and not for muscle pain. (Jt. Ex. 6, p. 136)

Claimant returned to Mercy Physical Medicine and Rehabilitation on November 13, 2017. (Cl. Ex. 17, p. 162) Claimant had trigger point injections over the bilateral upper trapezius and levator scapulae. (Cl. Ex. 17, p. 162) Claimant tolerated the procedure without any complications.

On December 6, 2017, claimant presented to the Mercy East Village Family Practice & Urgent Care. (Cl. Ex. 19, p. 174) She was there to establish care since Dr. Moore had retired. Rebecca Kriha, PA-C, treated claimant for shoulder, back, and neck pain. The physician's assistant noted:

> There is no specific injury to her shoulders, back, neck, but she does drive a forklift so she is doing a lot of manual labor and she believes that this is what has caused her pain. She states that it is worse when she is bending and twisting.

(Cl. Ex. 19, p. 174)

On December 14, 2017, claimant returned to Dr. Phu for additional trigger point injections. (Cl. Ex. 17, p. 164) The affected areas were identified over the bilateral lumbar paraspinals, bilateral upper trapezius, and levator scapulae. (Cl. Ex. 17, p. 164)

On December 20, 2017, claimant visited Jolene M. Smith, D.O., a physician at Pain Specialists of Iowa. Claimant complained of neck and shoulder pain and desired a consultation. Dr. Smith examined claimant. The physician noted:

> MUSCULOSKELETAL: Bilateral upper and lower extremity muscle strength normal. Palpable tenderness significant bilateral cervical paraspinals and left lumbar paraspinals. Bilateral cervical facet loading maneuvers reproduced neck pain. Positive left-sided Spurling's test with reproduction of pain into the neck and down the left anterior arm to the elbow. Left lumbar facet loading maneuvers reproduced pain over the left L4-5 and L5-S1 regions. Positive left straight leg raise for reproduction of left low back pain. Positive right cross straight leg raise for reproduction of left low back pain.

(Cl. Ex. 18, pp. 168,169)

Dr. Smith assessed claimant's condition as:

1. Spondylosis of lumbar region without myelopathy or radiculopathy –
2. Cervical radiculopathy –
3. Lumbar radiculopathy –
4. Chronic pain syndrome –
5. Chronic, continuous use of opioids.

(Cl. Ex. 18, p. 169)

On January 9, 2018, claimant saw the physician's assistant again. Ms. Kriha would not prescribe narcotic pain medication for claimant. (Cl. Ex. 19, p. 180)

Claimant returned to Dr. Phu on January 16, 2018. (Cl. Ex. 17, p. 166) Claimant underwent trigger point injections into the left lumbar paraspinals and bilateral upper trapezius. (Cl. Ex. 17, p. 166)

On January 23, 2018, claimant returned to the Mercy East Village Family Practice & Urgent Care Clinic. (Cl. Ex. 19, p. 183) Her problems were unrelated to the alleged work injuries.

RELEVANT OPINIONS FROM MEDICAL EXPERTS

Charles D. Mooney, M.D. examined claimant at the behest of defendants. The examination occurred on February 22, 2017 at the McFarland Clinic in Ankeny. A professional interpreter was provided for claimant. (Ex. A, p.2) Dr. Mooney opined claimant suffered from the following:

ASSESSMENT:

1. Medical record evidence of degenerative arthropathy and disc disease of the cervical spine with chronic cervicalgia.

2. Medical record evidence of bilateral shoulder complaints with symptoms of impingement.

3. Multiple medical comorbidities including obesity, deconditioning, COPD, hypertension, chronic low back pain.

4. Nonphysiologic findings and medical record evidence consistent with somatization and/or chronic pain syndrome.

5. Symptom exaggeration and psychological overlay. Cultural influences cannot be excluded.

(Ex. A, p. 5)

Defendants posed a number of questions to Dr. Mooney. The questions and answers will be discussed.

ANSWERS TO SPECIFIC QUESTIONS:

1. In your opinion, are Ms. Tran's complaints due to a condition personal to her, or due to work-related incident of 04/06/16?

   ANSWER: The medical records clearly indicate that Ms. Tran has a long history of neck and shoulder pain which is unrelated to any work-related

incident. She is claiming that there is a cumulative trauma related to her employment as a stockman, which is not supported by any direct incident or evidence provided by her, and also unsupported by the specific job analysis performed by Mr. John Kruzich on 01/11/17.

(Ex. A, p. 5)

2. In your opinion, did Ms. Tran's work activities or the incident that she describes that happened materially aggravate or worsen her condition?

   ANSWER: It is my opinion that there is no specific activity that has caused any material aggravation, that her current complaints are consistent with the natural progression of osteoarthropathy and degenerative disc disease of the cervical spine and joints. This is a common age-related condition rather than having any specific relationship to work activities. It is my opinion that the job description as provided, as well as the job analysis support that these activities would not materially aggravate, worsen, or accelerate these chronic medical conditions.

3. Would you describe her current complaints as a temporary exacerbation of a preexisting condition?

   ANSWER: No. It is my opinion that her ongoing and chronic complaints are directly related to the diagnoses noted above, which commonly wax and wane without specific provocation.

4. Are you recommending any further treatment in relation to her work injury? If so, what are those recommendations?

   ANSWER: No.

5. In your opinion, is Ms. Tran at maximum medical improvement in regard to the alleged 04/06/16 work injury?

   ANSWER: It is my opinion that there is no evidence that any such injury is evident. Please see #1 above. As such, opinions as they relate to maximum medical improvement are not provided.

6. In your opinion, if Ms. Tran is at MMI, what if any permanent partial disability rating would you assign?

   ANSWER: It is my opinion, based on the 5th edition AMA guides, that there is no evidence of a work-related condition and as such, issues of partial permanent impairment are also not considered.

7. In your opinion, do you impose any permanent or temporary work restrictions for Ms. Tran? If so, please advise what those should be?

ANSWER: It is my opinion that Ms. Tran is capable of continuing her current work activities as it relates to her employment at Titan Tire.

(Ex. A, pp. 5-6)

John D. Kuhnlein, D.O., MPH, conducted an independent medical examination for defendants on September 27, 2017. (Ex. B, p. 12) The independent medical examiner issued a report on October 12, 2017. He conducted a physical examination of claimant. Dr. Kuhnlein was asked a series of questions by defense counsel. He answered those questions in his report. They are duplicated below:

Questions

1. **What in your medical opinion, is Ms. Tran's current condition and diagnosis?**

    a. Degenerative arthropathy and degenerative disc disease of the cervical spine and described cervicalgia

    b. Left shoulder impingement syndrome

    c. Complaints of right shoulder pain of undetermined etiology

    d. Chronic musculoskeletal low back pain

    e. Complaints of right knee pain

    f. Osteoarthritis left knee

2. **Are Ms. Tran's neck, bilateral shoulders, and back related to the work injury of May 4, 2015, and/or May 7, 2015? If your opinion is that the symptoms were work-related, please state the basis of your opinion for each symptom.**

3. **Are Ms. Tran's neck, bilateral shoulder, back and bilateral knees related to the work injury of April 6, 2016? If your opinion is that the symptoms were work related, please state the basis of your opinion for each symptom.**

4. **If Ms. Tran's symptoms were work-related, specifically caused her condition for each date of injury, May 4, 2015, May 7, 2015, and April 6, 2016?**

    While it is possible that Ms. Tran's musculoskeletal complaints may be related to her work for Titan Tire, I am not able to state within a reasonable degree of medical certainty that her neck, bilateral shoulder,

low back, and bilateral knee complaints are related to her work for Titan Tire.

Ms. Tran has had issues in the past with neck pain, low back pain, and left shoulder pain. Dr. Moore's March 12, 2012, note indicated that Ms. Tran had neck pain for a year at that point. Dr. Miller's May 13, 2015, note describes a two-year history of pain which would not be consistent with the previous note. Ms. Tran told me that her symptoms started shortly before the May 4, 2015 injury date which would not be consistent with the history given to the other providers. As such, it is uncertain when her symptoms actually started.

She has had positive rheumatoid studies, and Dr. Moore suggested a rheumatology referral, which, if performed, is not in the currently available file, so it's unknown whether her complaints are related to the musculoskeletal injury or an underlying immunological disease. When Dr. Meyer saw her in February 2013, he offered an MRI of her left shoulder but she declined. She has declined other diagnostic studies since then, so it is not exactly known why she has the pain of which she complains.

Ms. Tran relates no change in her symptoms when she was away from the workplace for significant periods of time as she returned to Vietnam. She relates no change in her symptoms when she was off work for 12 weeks with the coronary stent procedure and was away from the workplace stressors. If the workplace stressors were a significant more than minor factor in her musculoskeletal pain, one would expect her symptoms to change somewhat while she was away in Vietnam for four weeks, or the 12 weeks she was away from the workplace stressors after her stent insertion, and that's not seen in the file. In fact, her low back pain increased (see Moore, June 27, 2017, and July 7, 2017) which tends to suggest a non-workplace etiology for her complaints, at least during that timeframe.

There are significant gaps in treatment in the currently available record, with a seven-month gap between May 2015 and December 2015 and a gap between March 2016 and February 2017. Ms. Tran believes that she saw Dr. Moore during these two gaps, but there is nothing in the currently available file. She believes that she was receiving medications from Dr. Moore during this time, there is nothing to suggest that. To some extent, the documentation is not helpful, as her neck complaints appear and disappear at times, so it's uncertain if she had chronic neck pain or recurrent neck pain. In addition, the physical examinations appear to be in a computer-generated record, and so some aspects of the physical examinations never changed significantly from one visit to the next, so it's uncertain exactly what was seen during the physical examinations. She has been seeing Dr. Phu since approximately January 2017 – these

records are not in the currently available file. She believes that she may have seen an orthopedist again more recently, but, if so, that is not in the currently available file. As noted before, if she saw a rheumatologist in the past, it's not in the currently available file.

Ms. Tran attributes her symptoms to turning the steering wheel and twisting while operating the forklift and attributes her knee symptoms to operating the pedals of the forklift. She also describes lifting a propane tank, but this would be [sic] not be performed on a daily basis, and she could get assistance to do so. Mr. Kruzich's job analysis indicated that there were no significant risk factors for the neck or shoulders but did not address the low back and knees. Ms. Tran does have osteoarthritis in multiple sites, and she complains of pain, but at this point, it is not more probable that these conditions are related to her workplace.

There are non-occupational risk factors in Ms. Tran's case as well. She apparently has gout and is obese. She is a smoker although she quit the most recent time in May 2017.

Overall, when looking at the healthcare pattern in the available medical record, her symptoms were not changing when she has been away from the workplace, the variable physical examinations between the exam performed by Dr. Mooney, and the exam here today, the definitive diagnoses are not available for the neck, right shoulder, low back and both knees although there is evidence of left shoulder impingement with the type III acromion noted by Dr. Meyer.

While Ms. Tran has pain associated with the musculoskeletal complaints in her neck, shoulders, low back and knees, there is no convincing evidence in this file or from her history to confirm that these pain symptoms are related to her work for Titan Tire within a reasonable degree of medical certainty. While it is possible, it is not more probable based on what is currently known.

(Ex. B, pp. 22-24)

Dr. Phu, the physiatrist, issued an opinion regarding the cause of claimant's bilateral shoulder pain, neck pain, low back pain, and left pain that was detailed in a November 3, 2017 report. Dr. Phu had been treating claimant for a period of time. She opined:

Causation:

Bilateral shoulder pain- left more so than right, with some evidence of overuse syndrome from mild glenohumeral joint osteoarthritis and a mild sprain of the supraspinatus insertion. This finding can be a result of

regular lifting of "liners 20-60 lbs., gas tanks 60 lbs." as reported in IME through Medix. Even with underlying osteoarthritis of the shoulder joint as a pre-existing or gradual onset due to the natural aging process, the repetitive nature of the lifting with underlying poor mechanics and holding the liners that are wider than shoulder width. It is of my opinion that her pain in this region has been materially aggravated by her dedication to her job duties and the several years of her working.

Neck pain – The repetitive nature of turning the head, especially over the shoulder, can certainly lead an aggravation of pain in the neck. As with any regular movements, if done over and over again, in a solid work time over the past 17 years, one can have an aggravation of pain. It is of my opinion that her pain in this region has been *materially aggravated* by her dedication to her job duties and the several years of her working.

Low back pain – The nature of her job is mostly sedentary while in the forklift. I cannot conclude that the pain is aggravated with her positioning as she is able to get up and move around. The lower back pain, however, can be aggravated with the repetitive picking up of the liners from ground level and carrying them to the loading platform. It is of my opinion that her pain in this region has been materially aggravated by her dedication to her job duties and the several years of her working.

Left knee pain – There is underlying left knee osteoarthritis moderate in nature. The left knee can certainly be effected when stepping out of and into the fork lift as it is higher than a regular "stair step." It is of my opinion that her pain in this region has been materially aggravated by her dedication to her job duties and the several years of her working.

Maximum Medical Improvement:

I do believe Ms. Tran has met her Maximum Medical improvement for her left shoulder and left knee as she has had conservative treatments for these body parts. She has not met the MMI for her neck or lower back.

....

Future Medicals:

Shoulders and left knee: continued PT, medications, injections prn

Neck and lower back: further imaging, such as MRI's or CT scans, potential neck and back fluoroscopic injections such as medial branch blocks and eventual radiofrequency ablations. Continued PT, acupuncture, medications, home exercise program.

(Cl. Ex. 5, pp. 75-76)

In a subsequent report, Dr. Phu agreed with certain statements drafted by claimant's counsel. Dr. Phu agreed her opinions were based upon a reasonable degree of medical certainty. Dr. Phu also agreed with the statement:

> That the repetitive physical requirements of Ms. Tran's job as a "Tire Stock" for Titan Tire Corporation over the course of more than seventeen years resulted in causing cumulative trauma that either directly caused the described diagnoses, of bilateral shoulder pain, neck pain, low back pain and left leg pain, or at a minimum, was a substantial and material aggravating factor, resulting in a permanent worsening, lighting up, or aggravation of an underlying or preexisting degenerative condition.

Finally, Dr. Phu agreed with the following statement:

> That in your causation opinions provided in the November 3, 2017 letter, where you indicated that the pain she suffered from in the bilateral shoulders, neck, low back, and left knee. "... were materially aggravated by her dedication to her job duties and the several years of her working..." you were referring to the job demands/requirements that were provided to you by Ms. Tran at office visits, the job description form prepared by Titan Tire Corporation, the Questionnaire form filled out by Ms. Tran for the Medix medical/legal examination paid for by the defendants, the three video excerpts provided by the defendants, a job analysis performed by ARC Physical Therapy on behalf of the defendants, the length of her employment with Titan Tire Corporation and your review of the medical records provided with my letter to you dated October 2, 2017. (Exhibit A)

(Cl. Ex. 5, pp. 77-78)

In December of 2017, Dr. Phu wrote she was in agreement with the impairment ratings Dr. Stoken had calculated. Those ratings are discussed in the succeeding paragraphs.

Claimant's counsel contacted Jacqueline M. Stoken, D.O., P.C., to perform an independent medical examination. (Cl. Ex. 2, p. 15) The examination occurred on November 7, 2017. Claimant was accompanied by an interpreter who did all of the interpretation for claimant.

Claimant explained to Dr. Stoken that she drove a forklift truck. Her arms were extended and she continuously had to extend her head and body to the left in order to drive the truck in a safe and proper fashion. Claimant reported she developed bilateral shoulder pain, neck and back pain. The back pain eventually radiated down the left lower extremity. Claimant did report her pain to members of Titan Tire management, but she was told to see her personal care physician.

Dr. Stoken conducted a physical examination of claimant. The examination included the cervical spine, the bilateral shoulders, the lumbar spine, and the left lower extremity. Dr. Stoken diagnosed claimant with:

IMPRESSION:

1. Cumulative trauma to the cervical and lumbar spine, left knee and bilateral shoulders with bilateral shoulder, neck, left knee and low back pain with left lower extremity radiculopathy.

2. Chronic pain syndrome.

(Cl. Ex. 2, p. 23)

Counsel for claimant posed a number of questions to Dr. Stoken. She addressed the questions in her report. With respect to causation, Dr. Stoken opined:

2. **Causation. As to the above diagnoses considering the 17+ years of employment with Titan Tire Corporation and the repetitive physical requirements of her job. If you find that Ms. Tran has any underlying degenerative condition, would you consider the length of time worked at Titan Tire Corporation and the repetitive physical requirements of her job, to be considered a substantial and material aggravating factor resulting in a permanent worsening, lighting up, or aggravation of that underlying or preexisting condition?**

   Ms. Tran does have underlying degenerative conditions in the cervical, low back, shoulders, and left knee. Considering the length of time she worked at Titan Tire Corporation, the type of job that she did with the repetitive movements, and the long work days of up to 12 hours per day are considered a substantial and material aggravating factor resulting in a permanent worsening, lighting up, or aggravation of the underlying or preexisting conditions. I have reviewed the videos of the job that she performed at Titan Tire Corporation.

   3. MMI/Permanent Impairment. Is Ms. Tran at MMI and when did she reach that point? If she is at MMI, what if any, permanent impairment rating in accordance to the *AMA Guides,* Fifth Edition, would you assign relative to the claimed cumulative trauma injuries?

   Ms. Tran is at MMI for the left knee and shoulder injuries. She reached as of 12/01/16.

   She is not at MMI for her cervical and low back pain as she has not had a workup or treatment for these areas. Workup may include x-rays and MRIs. Treatment may include medication, physical therapy, injections, acupuncture and a home exercise program.

Cervical Injury:

Using the *AMA Guides to the Evaluation of Permanent Impairment,* Fifth Edition, Chapter 15, table 15-5, page 392, she fits into the DRE Cervical Category II with 5-8% Impairment of the Whole Person. Her clinical history and examination findings are compatible with this injury. I would assign her 5% impairment of the Whole Person due to this injury.

Lumbar Injury:

Using the *Guides,* Chapter 15, table 15-3, page 384, she fits into the DRE Lumbar Category II with 5-8% Impairment of the Whole Person. Her clinical history and examination findings are compatible with this injury. She does have asymmetric loss of ROM, muscle spasms, and left lower extremity radiculopathy. I would assign her 8% Impairment of the Whole Person due to this injury with low back pain and left lower extremity radiculopathy.

Right Shoulder Injury:

Using the *Guides*, Chapter 16, figure 16-1b, page 437, she has 13% impairment of the Right Upper Extremity due to deficits in ROM.

Left Shoulder Injury:

Using the *Guides,* Chapter 16, figure 16-1b, page 437, she has 12% Impairment of the Left Upper Extremity due to deficits in ROM.

Using the *Guides,* Chapter 16, table 1603, page 439, this converts to 7% Impairment of the Whole Person.

Left Knee Injury;

There is no impairment as she has full range of motion.

Total Impairment;

Using the *Guides,* Combined Values Chart, page 604, in combining the above impairments of 8% + 8% + 7% + 5% = 25% Impairment of the Whole Person.

(Cl, Ex. 2, pp. 24-25)

At the time, Dr. Stoken did not issue permanent work restrictions. The independent medical examiner did recommend the following future medical treatment:

> Reasonable future medical care would be pain management. This would include periodic physician visits, medications, and/or injections.
>
> She would also benefit from evaluation and treatment for her cervical and low back pain as she has not had a workup or treatment for these areas. Workup may include x-rays and MRIs. Treatment may include medication, physical therapy, injections, acupuncture and a home exercise program.

(Cl. Ex. 2, p. 25)

Later, Dr. Stoken reviewed the functional capacity evaluation that was performed by Todd Schemper, PT, DPT. (Cl. Ex. 2, p. 42) Dr. Stoken concurred with the results of the FCE. However, Dr. Stoken did not believe claimant was capable of full-time work due to chronic pain which affected so many areas of claimant's body. (Cl. Ex. 2, p. 42)

Claimant's counsel also contacted claimant's personal physician, Dr. Moore. He agreed with statements prepared by Mr. Krpan. Dr. Moore diagnosed claimant with work-related conditions such as neck pain, bilateral shoulder pain, back pain, left knee pain, and overuse syndrome. (Cl. Ex. 6, p. 90)

Dr. Moore agreed with the following statement:

> **Causation.** That the repetitive physical requirements of Ms. Tran's job as a "Tire Stock" employee for Titan Tire Corporation over the course of over 17 years, as described by Ms. Tran to you in office visits, and as described in the company's formal job description, the Medix questionnaire form filled out by Ms. Tran for them, the video excerpts made by the defendants, the job analysis performed by ARC Physical Therapy on behalf of the defendant and your review of the medical records provided, resulted in causing cumulative trauma that either directly caused the above described diagnoses/assessments, set out in numbered paragraph 1, or at a minimum was a substantial and material aggravating factor resulting in a permanent worsening, lighting up, or aggravation of an underlying or preexisting degenerative condition.

(Cl. Ex. 6, p. 91)

RATIONALE AND CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the

injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 908, 76 N.W.2d 756, 760-61 (1956). It the claimant had a preexisting condition or disability that is materially, aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 135, 115 N.W.2d 812, 815 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 375, 112 N.W.2d 299, 302 (1961).

When an expert's opinion is based upon an incomplete history it is not necessarily binding on the commissioner or the court. It is then to be weighed, together with other facts and circumstances, the ultimate conclusion being for the finder of the fact. Musselman v. Central Telephone Company, 154 N.W.2d 128, 133 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 521, 522, 133 N.W.2d 867 (1965).

The weight to be given an expert opinion may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. St. Luke's Hospital v. Gray, 604 N.W.2d 646 (Iowa 2000).

The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence. Together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire and Casualty Co., 526 N.W.2d 845 (Iowa 1995).

Claimant filed three petitions for cumulative injuries. The dates were May 4, 2015, May 7, 2015, and April 6, 2016. The most accurate date for these proceedings is May 7, 2015. The date appears to be the date claimant completed the employee incident report. (Cl. Ex. 12, p. 130) The undersigned deputy determines any cumulative injuries sustained at Titan Tire Corporation were sustained on May 7, 2015. Therefore, the relevant File number is 5058174. File number 5058173 and File number 5058175 are hereby dismissed. Claimant takes nothing under the other two file numbers.

Claimant and her daughter, Michelle Phan, provided credible testimony, despite the fact there were multiple problems with the interpreter who was retained by defendants. The interpreter often had a difficult time communicating with claimant. Fortunately, no one objected when Ms. Phan interjected and corrected the translation.

There is no dispute. Claimant had preexisting problems with osteoarthritis in her cervical spine. She had complained of neck and low back pain for many years. She had pain in her shoulders before she filed her petitions with the Iowa Division of Workers' Compensation. However, pre-existing conditions, have never barred a claimant from receiving workers' compensation benefits if the preexisting condition or disability is materially aggravated, accelerated, worsened, or lighted up so that it results in disability. See: Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956); Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962).

The record, in its entirety, supports a finding that claimant sustained cumulative injuries to her bilateral shoulders, neck, low back, and left knee as a result of her repetitive and physically demanding work at Titan Tire Corporation. Claimant explained in detail her job duties. It is very easy to understand why the left side of her body was so painful when she had to drive the forklift backwards and turn her neck to the left to look behind her shoulder. She was also lifting heavy products and delivering those products to the tire builders. Then once a day, she changed a 60-pound propane tank on her forklift truck. Claimant also repetitively bent down and picked up discarded scraps and other materials from the floor. All of the work was heavy manual labor. Claimant had been performing the work since September of 1998. She had complained to her supervisors about her pain over the course of her employment. The supervisors told her to see her own physician.

The two treating physicians, Dr. Moore and Dr. Phu diagnosed claimant with overuse syndrome. They examined claimant on numerous occasions. Claimant explained to them, the various duties she had assigned to her. The treating physicians had an accurate picture of the physical demands placed on claimant. They understood how the physicality of the job impacted claimant's preexisting conditions.

Dr. Stoken also diagnosed claimant with overuse syndrome. The independent medical examiner, held a lengthy conversation with claimant about her job duties. Dr. Stoken had a complete profile of claimant's work duties. Dr. Stoken reviewed the video tapes supplied by Titan Tire. She also considered the length of time claimant had worked for the company, as well as the hours claimant worked each week, performing repetitive duties. All of those factors convinced Dr. Stoken, claimant's employment was a substantial and material aggravating factor resulting in a permanent worsening, lighting up, or aggravation of claimant's underlying preexisting conditions. Dr. Stoken also reviewed the valid FCE performed by Mr. Schemper. Dr. Stoken concurred with the results of the FCE. She did not believe claimant was capable of full-time employment due to her multiple pain issues. Dr. Stoken opined claimant was not at maximum medical improvement with respect to the cervical spine and the lumbar spine.

Dr. Miller, Dr. Mooney and Dr. Kuhnlein did not have a complete composite of claimant's work duties. It is the understanding of this deputy, the video provided by Titan Tire, did not depict a forklift driver driving backwards and looking over her left shoulder, as described by claimant on numerous occasions. Dr. Miller diagnosed claimant with osteoarthritis. He could not state with medical certainty claimant's issues were work related.

Dr. Mooney relied upon the job analysis performed by John Kruzich on January 11, 2017. (Jt. Ex. 8, pp. 155-158) Dr. Mooney did not give any weight to the conversation he held with claimant. In fact, Dr. Mooney totally discounted anything claimant had to say about her job duties. His bias was evident when he wrote:

> She is claiming that there is a cumulative trauma related to her employment as a stockman, which is not supported by any direct incident

> or evidence provided by her, and also unsupported by the specific job analysis performed by Mr. John Kruzich on 01/11/17.

(Ex. A., p. 5)

Dr. Kuhnlein reported it was possible for claimant's conditions to be aggravated by her work. However, Dr. Kuhnlein could not state to a reasonable degree of medical certainty the conditions were aggravated by claimant's employment at Titan Tire.

It is the determination of the undersigned deputy; the greater weight of the evidence establishes claimant's employment materially aggravated, accelerated, worsened or lighted up claimant's preexisting conditions. According to Dr. Stoken and Dr. Phu claimant has not reached maximum medical improvement with respect to the cervical and lumbar spine. Therefore, a determination of industrial disability cannot be made at this time.

The running award commenced on November 2, 2017 and continues until such time as claimant reaches maximum medical improvement. Claimant shall be paid at the stipulated weekly benefit rate of $543.06 per week. Accrued benefits shall be paid in a lump sum, together with interest.

Interest shall be paid at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July1, 2017 shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. April 24, 2018).

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

The next issue for resolution is the matter of medical care and the payment of medical benefits incurred to date. Defendants are liable for all medical bills relating to the bilateral shoulders, the left knee, the cervical spine, and the lumbar spine.

As stipulated by the parties, defendants shall take credit for all payments made pursuant to Iowa Code 85.38(2) and defendants shall pay for the medical bills detailed in claimant's exhibit 11.

Claimant is requesting alternate medical care pursuant to Iowa Code section 85.27. Defendants have provided no care to claimant. It is the determination of the

undersigned; claimant is entitled to select her own medical providers. Defendants will be liable for the costs.

With respect to the issue of penalty benefits, the matter is deferred until such time as claimant has reached maximum medical improvement. It would not be fair to assess penalty benefits at this time when permanency has not been determined.

Pursuant to Iowa Code section 85.39, claimant is entitled to be reimbursed for Dr. Stoken's independent medical report in the amount of $4200.00.

The final issue is the matter of costs.

Iowa Code section 86.40 states:

> Costs. All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> Costs. Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under

our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

Defendants are liable for the following costs:

Filing fee	$100.00
Service fee	unknown
Dr. Stoken's addendum	$200.00
Dr. Phu's report	$400.00

The report of Mr. Phil Davis will be reserved until after claimant has reached maximum medical improvement.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing from these proceedings in File Number 5058173.

Claimant takes nothing from these proceedings in File Number 5058175.

In File Number 5058174, defendants shall pay a running award from November 2, 2017 until such time as claimant has reached maximum medical improvement.

Accrued benefits shall be paid in a lump sum together with interest as discussed in the body of the decision.

Defendants are liable for the payment of past and future medical bills related to the bilateral shoulders, the left knee, the cervical spine, and the lumbar spine.

Claimant is entitled to alternate medical care pursuant to Iowa Code section 85.27 and she has the right to select her medical providers.

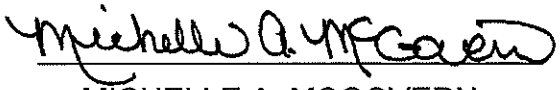
Defendants are liable for the cost of Dr. Stoken's independent medical examination in the amount of four thousand two hundred and 00/100 dollars ($4,200.00).

Defendants are liable for costs as detailed in the body of the decision.

Defendants shall file all reports as required by law.

The issues of permanency and penalty benefits are reserved until such time as claimant is no longer at maximum medical improvement.

Signed and filed this 7th day of February, 2019.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Larry D. Krpan
Attorney at Law
2700 Westown Pkwy, Ste. 300
West Des Moines, IA 50266-1411
larry@krpanlawoffice.com

Luke Draisey
Attorney at Law
215 Tenth St., Ste. 1300
Des Moines, IA 50309
lukedraisey@davisbrownlaw.com

Gene R. La Suer
Attorney at Law
215 Tenth St., Ste. 1300
Des Moines, IA 50309-3993
genelasuer@davisbrownlaw.com

Joni L. Ploeger
Attorney at Law
215 Tenth St., Ste. 1300
Des Moines, IA 50309
joniploeger@davisbrownlaw.com

MAM/sam

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.